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March 26, 1993

Ms. Donna Searcy
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: 93-36

Dear Ms. Searcy:

Enclosed for filing are an original and six (6) copies of the

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Tariff Filing Requirements for)
Nondomiant Common Carriers)

CC Docket No. 93-36

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF ELECTRIC LIGHTWAVE, INC.

Electric Lightwave Inc. (ELI) hereby files these comments in the above-captioned proceeding. ELI is a competitive access provider (CAP) currently providing service in Portland, Oregon and Seattle, Washington and soon to be providing service in California, Utah, Arizona and Nevada.

ELI supports the tariffing proposals for nondominant carriers set out by the Commission in the Notice of Proposed Rulemaking (NPRM) released on February 19, 1993. ELI believes that the Commission has the authority to develop tariff requirements for nondominant carriers that differ from those for dominant carriers. The Court of Appeal's Decision, which determined that MCI's activity violated Section 203 of the Communications Act, relied on the nondiscretionary "shall" language of that Section. As the Commission points out, the use of the word "may" in section 204 provides discretion to propose differing tariff requirements that further the Commission's policy goals.

We believe the proposed rule effectively limits the opportunity for incumbents to use the regulatory process to unfairly enhance their competitive advantage. We are particularly familiar with the ability of incumbent carriers and others to use the regulatory process to thwart entry and delay new service offerings. While several states have developed procompetitive policies that have allowed CAPS to enter the market and respond to customer needs, this is not uniformly true, especially in Western states. ELI has encountered significant resistance in both Oregon and Washington from local exchange carriers and in some instances from the Commission itself. In most cases, these carriers have used regulatory procedures and rules to delay the offerings of ELI. The litigation costs in and of themselves can become a barrier to entry. With these experiences in mind, ELI supports the proposal of the Commission to allow tariffs to become effective on not less than a one day notice.

We are sure that dominant carriers will argue for longer advance notice periods on nondominant tariff filings. However, a longer notice period will not serve any public interest goal and will instead merely provide a vehicle for delaying the service offerings of the CAPS. As the Commission has pointed out, the longer notice period allows competitors to begin, develop and implement a market response before the proposed tariff becomes effective. This has the affect of delaying new service offerings to customers and discouraging creative service offerings. ELI urges the Commission not to be persuaded by the arguments that will be advanced by the dominant carriers.

ELI supports the Commission's proposals and believes that the proposals are legally defensible and within the Commission's discretion to implement.

For the above reasons, ELI requests the Commission to move forward to put these new tariffing rules in place on an expeditious basis.

Respectfully submitted,



Ellen S. Deutsch
Senior Counsel
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8100 N.E. Parkway Drive
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March 26, 1993